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Attorneys for Defendant Sonos, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA,
SAN FRANCISCO DIVISION

GOOGLE LLC,

Plaintiff,

v.

SONOS, INC.,

Defendant.

Case No. 3:20-cv-06754-WHA

**SONOS, INC.'S MOTION FOR LEAVE
TO AMEND INFRINGEMENT
CONTENTIONS PURSUANT TO
PATENT L.R. 3-6**

Date: March 24, 2022

Time: 8:00 a.m.

Place: Courtroom 12, 19th Floor

Judge: Hon. William Alsup

Complaint Filed: September 28, 2020

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that on March 24, 2022 at 8:00 a.m., or as soon thereafter as may be heard before the Honorable Judge William Alsup in Courtroom 12 on the 19th Floor of the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Sonos, Inc. (“Sonos”) will, and hereby does, move this Court for an order granting Sonos leave to amend its infringement contentions as to U.S. Patent No. 9,967,615 (the “’615 Patent”) pursuant to Local Patent Rule 3-6 and the Court’s Case Management Order (Dkt. 67, ¶17). This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Geoffrey Moss (“Moss Decl.”), and exhibits thereto, all documents in the Court’s file, and such other written or oral evidence and argument as may be presented at or before the time this motion is heard by the Court.

STATEMENT OF THE RELIEF REQUESTED

Pursuant to Patent Local Rule 3-6 and the Court’s Case Management Order (Dkt. 67, ¶17), Sonos requests that this Court grant Sonos leave to amend its infringement contentions as to U.S. Patent No. 9,967,615 (the “’615 Patent”).

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF RELEVANT FACTS

Sonos served its infringement contentions on October 21, 2021, including contentions for U.S. Patent Nos. 9,967,615 (the “’615 Patent”) and 10,779,033 (the “’033 Patent”). Since then, the parties have conducted substantial discovery.

On January 10, 2022, pursuant to Patent Local Rule 4-2, the parties exchanged their proposed constructions for claim terms identified by the parties in their Patent Local Rule 4-1 exchange. In its Patent Local Rule 4-2 disclosure, Google set forth (for the first time in this case) its position on how the terms “resource locators” and “local playback queue on the particular playback device” found in the asserted claims of the ’615 Patent ought to be construed.

1 Thereafter, Sonos diligently undertook an analysis to see how Google’s proposed
 2 constructions, if adopted, would affect Sonos’s infringement contentions for the ’615 Patent.¹ A
 3 copy of Sonos’s proposed Amended Infringement Contentions in redline is submitted
 4 concurrently as Exhibit 1 to the Moss Declaration.

5 **II. SONOS HAS GOOD CAUSE**

6 Patent Local Rule 3-6 specifies that infringement contentions may be amended for “good
 7 cause.” Patent L.R. 3-6. The traditional two-part inquiry under Patent Local Rule 3-6 is first,
 8 whether a party has “proceed[ed] with diligence in amending [its] contentions when new
 9 information comes to light,” *O2 Micro Int’l, Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355,
 10 1366 (Fed. Cir. 2006), and second, whether “a showing of undue prejudice may support denial of
 11 leave.” *Life Techs. Corp. v. Biosearch Techs., Inc.*, No. 12-cv-00852-WHA, 2012 WL 1831595,
 12 at *1 (N.D. Cal. May 18, 2012). This Court, however, has broad discretion to grant leave to
 13 amend. *Tech. Licensing Corp. v. Blackmagic Design Pty Ltd.*, No. 13-cv-05184-SBA, 2014 WL
 14 5499511, at *2 (N.D. Cal. Oct. 30, 2014).

15 Sonos has proceeded with diligence. Prior to receiving Google’s Patent Local Rule 4-2
 16 proposed constructions, Sonos had no way to know Google’s position on “resource locators” or
 17 “local playback queue on the particular playback device.” Although the parties engaged in claim
 18 construction proceedings in the Western District of Texas before this case was transferred to this
 19 Court, Google had not previously sought construction for either of these terms. Immediately after
 20 receiving Google’s proposed constructions, Sonos developed alternative infringement positions in
 21 conjunction with extensive source code review. Specifically, after receiving Google’s new
 22 constructions, Sonos sought to conduct additional review of Google’s source code, and continued
 23 that review for eleven (11) days between then and now. Moss Decl. ¶ 4.

24
 25 ¹ On February 3, 2022, the day before the parties’ Patent Local Rule 4-3 joint submission and
 26 exchange of expert reports, Google withdrew its proposed construction for the term “local
 27 playback queue on the particular playback device,” proposed a new construction for the term
 28 “playback queue” applicable to both the ’615 and ’033 Patents, and identified new extrinsic
 evidence not previously identified in its Rule 4-2 disclosure. Sonos is currently analyzing how
 Google’s newly proposed construction for “playback queue,” if adopted, would affect Sonos’s
 infringement contentions for both the ’615 and ’033 Patents, and expressly reserves its rights to
 promptly move to further amend its contentions if necessary.

1 Sonos notified Google of its intent to amend its infringement contentions to take into
2 account Google's new constructions, on February 4, 2022. Moss Decl. ¶6, Exhibit 2. Consistent
3 with the Court's Case Management Order (Dkt. 67), that notice was given, and this motion is
4 being filed, within 28 days of when Sonos was first made aware of Google's claim construction
5 positions. The only amendments proposed in Exhibit 1 are made to present "back-up"
6 infringement theories for (i) the "resource locators" term of the '615 Patent Sonos may advance in
7 the event that the Court adopts Google's proposed construction for "resource locator" and (ii) the
8 "local playback queue on the particular playback device" term of the '615 Patent Sonos may
9 advance in the event that the Court rejects Google's new construction for "playback queue" for
10 both the '615 and '033 Patents but adopts Google's originally proposed construction for the
11 "local playback queue on the particular playback device" term of the '615 Patent. *See* Case
12 Mgmt. Order, Dkt. 67, ¶ 17; *see also*, *Fluidigm Corp. v. IONpath, Inc.*, No. 19-cv-05639-WHA,
13 2020 WL 5073938, at *3 (N.D. Cal. Aug. 25, 2020). Thus, Sonos was diligent in seeking to add
14 its "back-up" theories to its infringement contentions.

15 Google would suffer no prejudice from the proposed amendment. Google would not be
16 prejudiced if the Court grants the present motion. Google has been aware of the Court's Case
17 Management Order that permits each party to move promptly to disclose any "back-up"
18 contentions it may wish to make in the event the other side's claim construction is thereafter
19 adopted, and Sonos timely disclosed its "back-up" contentions in accordance with the Case
20 Management Order. The parties' opening briefs for the patent showdown is also more than two
21 months away, which will provide Google sufficient time to respond to Sonos's "back-up"
22 contentions if necessary. Thus, the Court should grant Sonos's motion. *See Fluidigm Corp.*, 2020
23 WL 5073938, at *5 (permitting a non-diligent patent owner to amend its infringement contentions
24 to include new theories because the parties' opening briefs for the patent showdown was a little
25 more than two months away).

1 **III. CONCLUSION**

2 For at least the foregoing reasons, Sonos respectfully requests the Court to grant Sonos
3 leave to amend its infringement contentions as to U.S. Patent No. 9,967,615.

4 Dated: February 7, 2022

5
6 By: /s/ Cole B. Richter

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